

U.S. PTO Customer No. 25280

Case #5113D

REMARKS

Claims 1-150 were pending in the application. Claims 1, 37, 38, 39, 41, 58, 65, 66, 81, 83, 84 and 118 have been amended. Claims 50 - 57, 86, 87, 129, 132, 133, 137, 139 and 142-150 are hereby canceled without prejudice. No claims have been added. Thus, claims 1-49, 58-85, 88-128, 130, 131, 134-136, 138, 140 and 141 remain subject to continued examination. Each of these claims is believed to be in condition for allowance. Accordingly, an action to that effect is requested at this time.

DOUBLE PATENTING:

Claims 1-4, 7-44, 46-49, 54, 57-85, 87-119, 123-136, 138, 140 and 141 were provisionally rejected under 35 U.S.C. 101 as claiming the same invention as various claims in copending Application 09/910,085. Due to the provisional nature of the rejection it is respectfully submitted that cancellation of common claims which may be subject to future amendment is premature at this time. However, upon the indication of allowability of claims in either application, Applicants will cancel duplicate claims as required.

Claim 5 was provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 5 and 6 in Application 09/910,085. Due to the provisional nature of the rejection, Applicants submit that a terminal disclaimer would be premature at this time. However, if required, once an indication is provided that the claims are

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otherwise in condition for allowance Applicants will provide an appropriate terminal disclaimer.

ART REJECTIONS:

All claims were rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent 4,522,857 to Higgins (Higgins '857) in view of U.S Patent 5,610,207 to De Simone (De Simone) either as a stand alone combination or further in view of various supplemental art. Continued rejection on these grounds is respectfully traversed and reconsideration is requested at this time.

Applicants note that all claims specifically recite a carpet tile. As understood, the fundamental rational for all rejections is that it would have been obvious to one of skill in the art to substitute a rebond foam layer as taught by De Simone for the foam layer in the tile of Higgins '857. In addressing this same rejection in an earlier application 09/721,871 being examined by the same Examiner, Applicants have submitted the declaration of the Richard L. Kilpatrick who holds the position of Director of Development for the company which developed and manufactured the product set forth in the primary reference. This entity Milliken & Company also owns the present application. A copy of this declaration is appended for incorporation into the present record.

As one of skill in the art, Mr. Kilpatrick has concluded from his review of the secondary reference to De Simone and his intimate familiarity with the product of the primary Higgins '857 reference that contrary to the position taken by the Office Action, one of skill in the art would

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not have been motivated to substitute the foam layer in the tile disclosed in Higgins '857 with the rebond foam materials from De Simone due to the substantially reduced tensile and tear strengths reported in De Simone. Accordingly, reconsideration and withdrawal of all outstanding rejections based on De Simone is requested at this time.

As regards claims 37-39, each of these claims calls for the mass of adhesive material to be in contacting bonding relation to said rebond foam cushion. It is respectfully submitted that the art of record does not teach or suggest a tile of such construction and thus does not establish the requisite *prima facie* case of obviousness. In particular, since the primary reference (Higgins '857) incorporates a carrier layer 26 between the foam and the adhesive it is respectfully submitted that the claim recitation calling for the mass of adhesive material to be in contacting bonding relation to the rebond foam cushion cannot be present.

As regards claim 58, this claim has been amended to eliminate the specific recital of rebond foam. This is believed to be consistent with the scope of the disclosure wherin rebond is identified as a preferred but not exclusive foam cushioning material. By way of example, a general description of the construction as now claimed is provided at page 17, lines 16-26. In addition on page 39, various options for the cushioning material are provided which each include a recital of virgin and/or rebond polyurethane. Even with the amended claim scope it is respectfully submitted that the art of record does not teach or suggest all claim limitations and thus does not establish the requisite *prima facie* case of obviousness with respect to claim 58 or the claims depending therefrom. In particular, since the primary reference (Higgins '857) incorporates a carrier layer 26 between the foam and the adhesive it is respectfully submitted that

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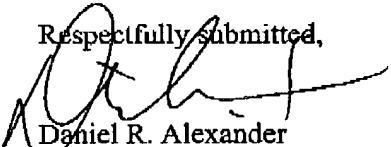
the claim recitation calling for a second layer of at least one resilient adhesive extending away from the second side of the layer of stabilizing material into contacting relation with the upper side of the foam cushion layer cannot be present. Moreover, as best understood, this feature does not appear to be taught or suggested by the secondary reference to De Simone.

CONCLUSION:

In light of the claim amendments and arguments set forth above, Applicants respectfully submit that the art of record does not establish a *prima facie* case of obviousness with respect to the claims as written. Accordingly, it is submitted that all claims are in condition for allowance at this time. While an attempt has been made to address all outstanding issues, to any extent that one or more issues remain, the undersigned respectfully requests a telephone conference to resolve such issues.

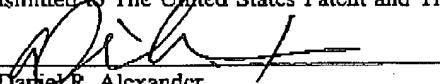
A request for a one (1) month extension of time accompanies this Amendment. To any extent required, a request for an additional extension of time is hereby made. Please charge any fees or credit any overpayment in connection with this Amendment to Deposit Account 04-0500.

February 5, 2004

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted to The United States Patent and Trademark Office at 703-872-9306 on February 5, 2004.


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Attorney for Applicant(s)